

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1641 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

ASHABEN K PANDAV

Versus

COMMANDANT

Appearance:

MR IS SUPEHIA for Petitioner

MR DA BHAMBHANIA, Additional Govt. Solicitor for the Respondent No.1.

MR MUKESH PATEL, AGP, for Respondent No. 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 02/03/98

ORAL JUDGEMENT

The petitioner, by way of this petition under Article 226 of the Constitution, has prayed for appropriate writ, order or direction, directing the respondents to appoint the petitioner on compassionate ground.

It may be stated that the father of the

petitioner expired on 24-11-1982 leaving behind him his illiterate widow and four minor children of whom the petitioner is the eldest one. The petitioner was born on 1-4-1970 and became major in the year 1988. Since the petitioner was studying in school and has passed SSC Examination in March, 1991, the petitioner became eligible for Government service on her passing the SSC Examination. The petitioner, therefore, made an application for compassionate appointment on 2-2-1991. Since the request of the petitioner has been turned down by the respondents, the petitioner has filed the present petition.

On behalf of respondent No.1, an affidavit in reply is filed denying the right of the petitioner to be considered for appointment on compassionate ground. In substance, it has been contended that no application has been made by the widow of the deceased within the stipulated time duration and family has survived on terminal benefits itself justifies the decision of the Government that petitioner is not entitled for compassionate appointment in any manner. It is further pointed out that even the application made by the applicant has been made after attaining the age of 18 years and after the period prescribed under the regulations and in that view of the matter the applicant has no right to be considered and the decision of the subordinate office at the relevant time to place the application of the applicant in the list of eligible person is justified. The petitioner in the affidavit-in-rejoinder has placed on record the guidelines for considering the cases of compassionate appointment of the dependents of deceased Government servants. Clause 9 of the said guidelines is relevant for our purpose which, *inter alia*, provides:

"There should not be an unduly a long time lag between the death of the Government servant and the compassionate appointment. Such compassionate appointment will be permissible within a period of five years after the occurrence of the death of the Government servant. However, in exceptional cases, e.g. in case of a Government servant at the time of his death, leaving behind illiterate widow and minor children none of whom can be offered employment, in such a case the period of five years can be relaxed with the General Administration Department's prior concurrence."

Considering the case on hand, the request of the

petitioner is rejected mainly on the ground that the application was made after a lapse of about nine years from the date of the death of the deceased Government servant and that, therefore, the application of the petitioner cannot be entertained even if the relaxation of five years is granted to her. In my view, the authorities ought not to have rejected the just claim of the petitioner on highly technical ground of delay. It may be stated that the petitioner hails from Adivasi community and residing in a remote area of Meghpur in Meghraj taluka of Sabarkantha district. Admittedly, the petitioner was minor when she lost her father in 1982. The petitioner became major in the year 1988 and passed her SSC Examination in March 1991 and became eligible for the Government service. Before that she had already applied for considering her for compassionate appointment. If these facts are taken into consideration, there does not appear to be a long delay even if some delay is there. As per clause 9 of the guidelines ,the Government is required to take into consideration while relaxing the period of five years further. Mr. Suphia, learned Advocate for the petitioner has also stated that the petitioner is still unmarried and her case can be considered on compassionate ground.

In the result, this petition is allowed. The respondents are directed to take suitable decision in the matter of appointment of the petitioner on compassionate ground in view of the observations made above and to pass appropriate orders in accordance with law within six weeks from the date of receipt of the writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs. D.S.permitted.

Verified copy